

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

TRUCK-RAIL HANDLING, INC. and QUALITY
TRANSPORT, INC.,

Plaintiffs,

v.

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY,

Defendant.

JUDGE KENNELLY

MAGISTRATE JUDGE SCHENKIER

(N. Dist. Cal. Case No. C 02 2825)
(Judge Jeffrey S. White)

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CLERK
U.S. DISTRICT COURT

**DEFENDANT'S EMERGENCY MOTION TO QUASH A THIRD PARTY SUBPOENA
IN A CIVIL CASE PENDING IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), through its attorneys Freeborn & Peters, moves to quash Truck-Rail Handling, Inc.'s ("TRH") and Quality Transport, Inc.'s ("QTI") Subpoena to Mr. Robert Krebs, Former Chief Executive Officer of BNSF, which includes a demand for Mr. Krebs' personal appearance, as well as the production of certain documents.

In further support of its motion, BNSF states:

1. BNSF is the defendant in an antitrust case brought by TRH and QTI in the Northern District of California. The case is captioned *Truck-Rail Handling, Inc., and Quality Transport, Inc. v. The Burlington Northern and Santa Fe Railway Company, USDC, Northern District of California C-02-2825 JSW*.

2. Rule 45 provides that “on a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it requires disclosure of privileged or other protected matter . . .” (Fed. Rule Civ. Proc. 45(c)(3)(A)(iii)) (West 2003).

3. On February 26, 2003, Judge White, of the United States District Court, Northern District of California, entered a protective order that, among other things, barred the deposition of BNSF employee, Mr. Robert Krebs. *See* February 26, 2003 Protective Order, attached hereto as Exhibit A and included herein.

4. On May 30, 2003, in violation of Judge White’s Protective Order, plaintiffs subpoenaed Mr. Robert Krebs’ deposition for June 9, 2003 at 9 a.m. The subpoena also demanded the production of certain documents by June 6, 2003 at 10 a.m. This subpoena was issued by The United States District Court for the Northern District of Illinois. *See* Subpoena, attached hereto as Exhibit B and included herein.

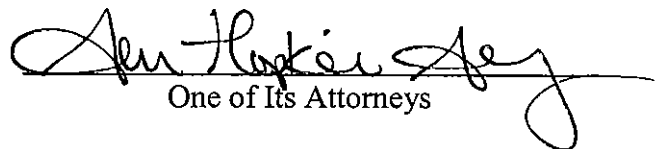
5. Plaintiffs’ subpoena for the deposition of Mr. Krebs is an improper attempt to side-step Judge White’s existing Protective Order issued in the United States District Court for the Northern District of California; and as a matter of law, unless or until, Judge White lifts this Protective Order, the deposition of Mr. Robert Krebs cannot go forward.

6. Therefore, this subpoena must be quashed pursuant to Rule 45 and Judge White’s February 26, 2003 Protective Order because the Protective Order prohibited plaintiffs from taking the deposition of Mr. Krebs.

WHEREFORE, for the foregoing reasons, BNSF respectfully requests that this Court quash the subpoena served on Third-Party, Mr. Robert Krebs.

DATED: June 3, 2003

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,**

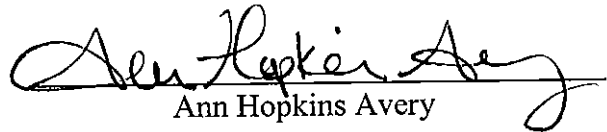
By: 
One of Its Attorneys

Jeffery M. Cross
Daniel C. Curth
Ann Hopkins Avery
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Phone: (312) 360-6000
Fax: (312) 360-6571

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing **Emergency Motion To Quash A Third Party Subpoena In A Civil Case Pending In The United States District Court, Northern District Of California** to be served on Doug Lawrence, counsel for TRH and QTI by facsimile and overnight mail this 3rd day of June, 2003 at the following address:

Doug Lawrence
Alioto Law Firm
555 California Street, 31st Floor
San Francisco, CA 94111
Fax: (415) 434-9200


Ann Hopkins Avery

#539609v2/05215-0117

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRUCK-RAIL HANDLING, INC.,

No. C 02-2825 JSW

Plaintiff,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

**ORDER RE DISCOVERY DISPUTES:
DEFENDANT'S MOTION FOR A
PROTECTIVE ORDER RE APEX
DEPOSITIONS; DEFENDANT'S
MOTION FOR LEAVE TO FILE
ADDITIONAL CONTENTION
INTERROGATORIES; AND
DEFENDANT'S REQUEST FOR
PROTECTIVE ORDER**

By numerous letter briefs submitted to the Court, the parties set forth their respective positions regarding three discovery disputes. The disputes concern (1) defendant's *de facto* motion for a protective order relating to the depositions of defendant's apex employees, (2) defendant's discovery motion for leave to propound contention interrogatories in excess of Rule 33(a) limits, and (3) the entry of a protective order.

Defendant's *de facto* motion for a protective order relating to the depositions of defendant's apex employees is **GRANTED** with respect to defendant's former Chief Executive Officer, Robert Krebs ("Krebs"), and Executive Vice President, Charles Schultz ("Schultz"). While the motion for a protective order is granted without prejudice, the Court will permit plaintiff to take the depositions of Mssrs. Krebs and/or Schultz, only if plaintiff clearly

United States District Court

For the Northern District of California

1 demonstrates a particularized need to take the depositions and that the information possessed by the
2 deponent(s) is not available from any other source. Having made a sufficient showing of particularized
3 knowledge of Rose, plaintiff's motion for a protective order relating to the deposition of defendant's
4 current Chief Executive Officer, Matt Rose ("Rose"), is **DENIED**. The parties are instructed to
5 observe the requirements of this Court's Civil Deposition Guidelines Order when conducting the
6 deposition of Rose (or any other deponent in this case).

7 Defendant's motion for leave to propound contention interrogatories in excess of Rule 33(a)
8 limits is **DENIED**. The previously permitted and propounded twenty-five interrogatories is deemed
9 sufficient.

10 With regard to the parties' dispute over the entry of a protective order, the Court finds that
11 such an order is appropriate in this case and, the parties having failed to stipulate to entry of such an
12 order, the Court will enter, by separate order, a court-approved protective order. If the parties wish to
13 modify or amend the form protective order entered in this matter, the parties shall submit a stipulation
14 indicating the proposed changes. Should a dispute arise concerning the particular designation of
15 specific documents or things, the parties shall exhaust the procedures set forth in the protective order
16 and shall seek a resolution, if necessary, pursuant to this Court's standing order regarding the resolution
17 of discovery disputes. In that connection, this Court will carefully scrutinize any improper designation of
18 documents as confidential pursuant to the protective order.

19
20 **IT IS SO ORDERED.**

21
22 Dated: February 26, 2003

23 /s/ Jeffrey S. White
24 JEFFREY S. WHITE
25 UNITED STATES DISTRICT JUDGE
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CIVIL MINUTES

JUDGE: JEFFREY S. WHITE

COURTROOM DEPUTY: Jennifer Ottolini

DATE: March 3, 2003

Court Reporter: Sahar McVickar

CASE NO. C-02-2825 JSW

TITLE: Truck-Rail Handling, Inc. v. The Burlington Northern and Santa Fe Railway Company

COUNSEL FOR PLAINTIFF:

Joseph M. Alioto
Joseph M. Alioto, Jr.

COUNSEL FOR DEFENDANT:

Jeffrey Cross

**PROCEEDINGS: Defendant's Motion to for Clarification of the Court's APEX Deposition Decision
and Stay of Deposition of its CEO (Telephonic)**

RESULTS: For the reasons set forth in the record, the Court's Order DENYING Protective Order for the Deposition of Matthew Rose is RE-AFFIRMED. Defendant's Request for Stay is DENIED. The Deposition for Matthew Rose is to take place and be completed no later than 3/7/03.

Issued by the
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

**TRUCK-RAIL HANDLING, INC., and
QUALITY TRANSPORT, INC.**

Plaintiffs,

v.
**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,**
Defendant.

COURT FILE NO.: C-02-2825-JSW

**SUBPOENA IN A CIVIL CASE
PENDING IN THE UNITED STATES
DISTRICT COURT, NORTHERN
DISTRICT OF CALIFORNIA**

TO:

Robert Krebs

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

Place of testimony:

Courtroom:

Date and time:

X YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

Place of testimony:

Date and time:

June 9, 2003, 9 a.m.

Freeborn & Peters

311 South Wacker Drive, Suite 3000

Chicago, IL 60606-6677

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below.

See attachment to this subpoena.

Place: Alioto Law Firm

Date and time:

June 6, 2003, 10 a.m.

555 California Street, 31st Floor

San Francisco, CA 94111

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE:

DATE: May 30, 2003

Attorney for Plaintiffs

Joseph M. Alioto, Jr.

Alioto Law Firm, 555 California Street, 31st Floor, San Francisco, California 94102 (415) 434-8900

ATTACHMENT
TO SUBPOENA IN A CIVIL CASE

USDC, Northern District of California Case No. C 02-2825 JSW

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Any and all documents, including but not limited to executive summaries, notes, meetings agendas, presentations, slides, and spreadsheets that refer or relate to: Truck-Rail Handling; Quality Transport; the rationalization of the transload, carload, grain, coal, and/or intermodal networks; any effort, strategy, or tactic by BNSF or any other party to limit, decrease, stabilize or increase the price of transloading, trucking or drayage; or any effort, strategy, or tactic by BNSF or any other party to limit the number of, decrease the number of or increase the density of transload operators, whether for the purpose efficiency, rationalization or any other purpose.

CASE

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

TRUCK-RAIL HANDLING, INC. and QUALITY
TRANSPORT, INC.

Plaintiffs,

v.

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY,

Defendant.

(N. Dist. Cal. Case No. C 02 2825)
(Judge Jeffrey S. White)

JUDGE KENNEDY

MAGISTRATE JUDGE SCHENKIER

NOTICE OF DEFENDANT'S EMERGENCY MOTION
TO QUASH THIRD PARTY SUBPOENA IN A CIVIL CASE PENDING IN THE
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

TO: Doug Lawrence
Alioto Law Firm
555 California Street, 31st Floor
San Francisco, CA 94111

DOCKETED

JUN 05 2003

PLEASE TAKE NOTICE that on _____, at _____ we shall
appear before the Honorable _____ in courtroom _____ in the
United States Courthouse, 219 S. Dearborn Street, Chicago, Illinois, and there present
Defendant's Emergency Motion to Quash a Third Party Subpoena In a Civil Case Pending in the
United States District Court, Northern District of California, a copy of which is served upon you
herewith.

03C 3791

FILED-EDS


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CLERK
U.S. DISTRICT COURT

1-1

DATED: June 3, 2003

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,**

By: 
One of Its Attorneys

Jeffery M. Cross
Daniel C. Curth
Ann Hopkins Avery
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Phone: (312) 360-6000
Fax: (312) 360-6571

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2003, I caused a true and correct copy of the foregoing **Notice of Emergency Motion To Quash a Third Party Subpoena in a Civil Case Pending in the United States District Court, Northern District of California** to be served on Doug Lawrence, counsel for TRH and QTI by facsimile and over-night mail this 3rd day of June, 2003 at the following address:

Doug Lawrence
Alioto Law Firm
555 California Street, 31st Floor
San Francisco, CA 94111
Fax: (415) 434-9200


Ann Hopkins Avery

#539844/05215-0117

DOCKETED

JUN 05 2003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOISCivil Cover Sheet **03C 379 1**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

MAGISTRATE JUDGE SCHENKIER

Plaintiff(s): **Truck-Rail Handling, Inc. and
Quality Transport, Inc.**Defendant(s): **The Burlington Northern and
Santa Fe Railway Company**

County of Residence:

County of Residence:

Plaintiff's Atty:

Doug Lawrence
Alioto Law Firm
555 California Street, 31st
Floor, San Francisco, CA 94111
(415) 434-8900

Defendant's Atty:

Jeffrey M. Cross, Daniel C.
Curth, Ann Hopkins Avery
Freeborn & Peters
311 S. Wacker Drive, Suite
3000, Chicago, IL 60606
(312) 360-6000

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

890 Other Statutory Actions

VI. Cause of Action:

Motion to Quash

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: No

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature:

ANN HOPKINS AVERY

Date:

6/3/3

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the Back button in your browser and change it.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

EASTERN DIVISION

03C 3791

Truck-Rail Handling, Inc. and Quality Transport, Inc.,
Plaintiffs v.
The Burlington Northern and Santa Fe Railway Company,
Defendant.

Case Number:
United States District Court,
Dist. of California, C 02 2825 JSW
JUDGE KENNELLY

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

The Burlington Northern and Santa Fe Railway Company, Defendant, MAGISTRATE JUDGE SCHENKIER

(A)		(B)	
SIGNATURE		SIGNATURE	
NAME Jeffrey M. Cross		NAME Daniel C. Curth	
FIRM Freeborn & Peters		FIRM Freeborn & Peters	
STREET ADDRESS 311 S. Wacker Drive, Suite 3000		STREET ADDRESS 311 S. Wacker Drive, Suite 3000	
CITY/STATE/ZIP Chicago, IL 60606		CITY/STATE/ZIP Chicago, IL 60606	
TELEPHONE NUMBER (312) 360-6000	FAX NUMBER (312) 360-6597	TELEPHONE NUMBER (312) 360-6000	FAX NUMBER (312) 360-6575
E-MAIL ADDRESS jcross@freebornpeters.com		E-MAIL ADDRESS dcurth@freebornpeters.com	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 0547980		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6229090	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME Ann Hopkins Avery		NAME	
FIRM Freeborn & Peters		FIRM	
STREET ADDRESS 311 S. Wacker Drive, Suite 3000		STREET ADDRESS	
CITY/STATE/ZIP Chicago, IL 60606		CITY/STATE/ZIP	
TELEPHONE NUMBER (312) 360-6000	FAX NUMBER (312) 360-6598	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS ahopkinsavery@freebornpeters.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

DOCKETED

JUN 05 2003

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